

that was or would have been treated as the first retail sale of the article under the temporary regulations published in the September 13, 1985, issue of the FEDERAL REGISTER (50 FR 37350) ("the interim regulations") will be treated as a taxable sale for purposes of this section. The tax on a sale or lease after September 30, 1987, will be based on a price determined under paragraph (d) of this section. For example, if a vehicle was sold on January 3, 1987, to a purchaser who intended to resell the article and who was not in the business of leasing to any extent, the sale would not have been taxable under the interim regulations even though the seller did not receive a certificate indicating the purchaser's intent to resell the article. If such a sale was not treated as a taxable sale by the parties, and the purchaser resells the article, the resale will be treated as a taxable sale of the article under paragraph (a)(2) of this section.

(ii) *Sales treated as first retail sale by purchaser and seller.* If the sale of an article after November 11, 1985, and before October 1, 1987, was treated as a taxable sale by the parties and tax was paid with respect to the article under the interim regulations, the subsequent sale of the article by the purchaser will not be treated as a taxable sale under paragraph (a)(2) of this section.

[T.D. 7882, 48 FR 14362, Apr. 4, 1983, as amended by T.D. 8050, 50 FR 37351, Sept. 13, 1985; T.D. 8200, 53 FR 16869, May 12, 1988; T.D. 8774, 63 FR 35804, July 1, 1998; T.D. 8879, 65 FR 17164, Mar. 31, 2000]

§ 145.4061-1 Application to manufacturers tax.

The provisions of § 145.4051-1(e) (1) and (2), relating to the definition of tractors and trucks, shall apply to section 4061(a)(1) for sales made on or after January 7, 1983. However, an incomplete chassis cab will be treated as a truck chassis for sales made on or after January 7, 1983, and before April 1, 1983. For purposes of section 4061, gross vehicle weight shall be determined under § 48.4061(a)-1(f)(3) (i) through (iv) for sales made on or after January 7, 1983, and before April 1, 1983.

PART 148—CERTAIN EXCISE TAX MATTERS UNDER THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

AUTHORITY: 26 U.S.C. 7805.

§ 148.1-5 Constructive sale price.

(a) *Purpose of this section.* The purpose of this section is to set forth temporary rules to be used in determining a constructive sale price under section 4216(b) of the Internal Revenue Code, as amended by section 115 of the Excise Tax Technical Changes Act of 1958, with respect to certain sales made on and after January 1, 1959, by a manufacturer, producer, or importer. The temporary rules set forth in this section have application in the case of articles in respect of which the manufacturer's excise tax imposed under Chapter 32 of the Code is based on the price for which the article is sold.

(b) *General rule—(1) Sales at retail.* Where a manufacturer, producer, or importer sells an article at retail, and the special rule provided in paragraph (c) of this section does not apply, the basis for tax shall be the lower of: (i) the actual price for which the article is sold; or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof. Thus, where a manufacturer, producer, or importer sells an article at retail, the tax on his retail sale ordinarily will be computed upon the highest price for which similar articles are sold by him to wholesale distributors. However, in such cases it must be shown that he has an established bona fide practice of selling such articles in substantial quantities to wholesale distributors. If he has no such sales to wholesale distributors, a fair market price will be determined by the Commissioner. In any case the price so determined shall not be in excess of the actual price for which the article is sold by him at retail.

(2) *Sales on consignment and sales otherwise than through an arm's length transaction.* For rules relating to the determination of a constructive sale price in the case of sales on consignment, or sales otherwise than through